

# Infusing sense into a dispute between competitors over confidential information

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- ▶ Dispute arises when customer uses confidential information relating to the manufacture of infused oils to become a competitor
- ▶ What length of injunction is an appropriate remedy?
- ▶ Guidance provided by the High Court

## What's it about?

Kerry Ingredients (UK) Limited (**Kerry**) produces infused oils. Bakkavor Group Limited (**Bakkavor**) was a customer of Kerry. However, Bakkavor began developing its own infused oils to compete with Kerry's products.

Kerry had provided Bakkavor (as Kerry's customer) with some information in relation to the composition and the manufacture of its products, in order that Bakkavor could satisfy itself they complied with food safety legislation.

In proceedings in the High Court, it was held that Kerry had provided the information about its products in confidence and in using that information as a "start point" for its own products, Bakkavor had breached that confidence.

## Why does it matter?

Although Bakkavor had breached Kerry's confidence, the Court only granted an injunction restraining use of the information until 30 June 2017 (less than a year from the date of the judgment). The Court noted that Kerry's information had limited confidentiality. If Kerry was granted an ongoing injunction then Bakkavor would effectively be kept out of the market indefinitely. That would have placed Kerry in a better position than if there had been no misuse of its information.

The Judge considered that, working backwards from information in the public domain, Bakkavor could have recreated Kerry's formulation, although this would have required substantial work and investment. Therefore, the time limited injunction struck the right balance between the positions of each of the parties.

## Now what?

Breach of confidence cases are highly fact dependent. However, this is a further indication from the Court that in exercising its discretion, it will seek to ensure that the remedy fits the damage suffered. Not every breach will justify a long term injunction, and a springboard type injunction, keeping a party out of the market for a shorter period of time, may be more appropriate.

In a breach of confidence case, the true value and object of the claim is often the injunction. Defendants may see this case as an indication that in the right circumstances, a loss may look a lot like a win.

[\*Kerry Ingredients \(UK\) Ltd v Bakkavor Group Ltd \[2016\] EWHC 2448 \(Ch\)\*](#)

For further information on this or any other IP related matter please contact [Rachel Cook](#) on 020 7160 3028